

# Department of Alcoholic Beverage Control

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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized agency established in 1955 (section 22 of Article XX, California Constitution). A division of the Business, Transportation and Housing Agency, ABC is responsible for the enforcement of the Alcoholic Beverage Control Act (ABC Act), Business and Professions Code section 23000 *et seq.*, and its regulations, which are codified in Divisions 1 and 1.1, Title 4 of the California Code of Regulations (CCR). The Act delegates to ABC the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the ABC Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines.

ABC is authorized to investigate violations of the Business and Professions Code and other statutes which occur on premises where alcohol is sold, and may deny, suspend, or revoke alcoholic beverage licenses. Approximately 71,200 retail licenses operate under this authority. ABC's disciplinary decisions are appealable to the Alcoholic Beverage Control Appeals Board. Many disciplinary actions taken by ABC, as well as other information concerning the Department, are printed in liquor industry trade publications such as *California Beverage News* and *Beverage Industry News*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern), with assistant directors in charge of each division. The Department is further divided into 24 field offices, which are headed by district administrators or supervisors and staffed by investigators, licensing representatives, and support personnel. ABC's investigators, who have full peace officer powers to enforce the ABC Act, the California Penal Code, and the Department's regulations, are responsible for investigating applicants for licenses and complaints filed against licensees and, when necessary, making arrests for statutory violations. In addition to the district offices' investigations, the Department operates a Special Operations Unit consisting of 22 special investigators who primarily assist district offices and other law enforcement agencies in undercover operations involving vice and criminal activities, as well as high-profile operations at large events.

ABC dispenses various types of licenses to qualified persons and legitimate businesses to sell, manufacture, or otherwise deal in alcoholic beverages. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" refers to a license to sell alcoholic beverages which will not be consumed on the premises. Population-based quotas determine the number of

general liquor licenses issued each year per county; in 1997, the legislature applied similar quotas to beer and wine licenses.

On March 17, Governor Gray Davis reappointed Jay Stroh as ABC Director. Stroh has directed the Department since 1983.

## MAJOR PROJECTS

### **ABC's Ban on Sweepstakes Promotions Prompts Challenges**

On January 8, the Office of Administrative Law (OAL) approved ABC's permanent amendments to section 106, Title 4 of the CCR, which sets forth the Department's standards and restrictions on the advertising and merchandising of alcoholic beverages. Section 106 implements Business and Professions Code sections 25500, 25502, and 25600, the state's so-called "tied-house laws" which control the advertising, marketing, and promotions programs of alcoholic beverage suppliers and their relationships with retailers and consumers. These statutes prohibit alcoholic beverage suppliers from providing, directly or indirectly, inducements or items of value to retailers; and prohibit ABC licensees generally from giving, directly or indirectly, premiums, gifts, or free goods to any person, licensed or not, unless specifically authorized by ABC regulations. ABC had previously adopted these regulatory changes on an emergency basis effective November 30, 1998. [16:1 CRLR 122-23]

Among other things, ABC's permanent changes to section 106 delete a previous requirement that ABC preapprove manufacturers' signs which are furnished to retailers for advertising purposes; allow alcoholic beverage suppliers to furnish, give, lend, rent, or sell promotional materials for alcoholic beverages to retailers for use within off-sale premises, so long as the promotional materials have no intrinsic value other than as advertising; allow suppliers who are authorized to sell distilled spirits to furnish retailers with lists of distilled spirits sold and/or produced; limit the value of consumer advertising specialties provided by a distilled spirits supplier to a retailer or to the general public to \$5 per unit original cost to the supplier who purchased it (the limit was previously \$1 per unit original cost); limit the value of consumer advertising specialties provided by a wine supplier to a retailer or to the general public to \$1 per unit original cost; and limit the value of consumer advertising specialties provided by a beer supplier to a retailer or to the general public to 25 cents per unit original cost (or \$15 in the aggregate for all such items given by a single beer supplier to a single retail premises per calendar year).

However, ABC's most controversial move was its amendment of subsection 106(j), which provides that "[n]othing in this Rule shall be construed to authorize the giving of any premium, gift or goods of any sort, whether by way of sweepstakes, drawings, prizes, cross-merchandising promotions with a non-alcoholic beverage product or products or any other method" if the value of the premium, gift, or goods given to an individual exceeds 25 cents with respect to beer, \$1 with respect to wine, or \$5 with respect to distilled spirits. The regulatory amendment—which first became effective in November 1998 on an emergency basis—interfered with the upcoming promotions of several alcoholic beverage manufacturers, and sparked substantial debate between ABC and the industry. ABC contends that the regulatory change clarifies existing law and "affirms that the statutory monetary limitations governing alcoholic beverage promotions are not and cannot be expanded by Departmental rule." However, members of the alcohol industry argue that the revised rule is inconsistent with ABC's previous position regarding consumer promotions; that prohibiting these types of marketing programs will cause irreparable harm to their business interests; and that the existing "tied-house laws" do not explicitly prohibit the use of sweepstakes.

Several lawsuits have been filed as a result of ABC's rulemaking, and the Department's enforcement of section 106(j) has been stayed until the matter is resolved (see LITIGATION). Further, legislation has been introduced to clarify that no ABC regulation may permit a licensee to give any premium, gift, or free goods to a consumer that is conditioned on the purchase of an alcoholic beverage (see LEGISLATION).

## Limitations on ABC Licenses for Aliens

On January 19, OAL approved ABC's adoption of new section 55.1, Title 4 of the CCR, which implements the provisions of the 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The federal law limits the eligibility of certain aliens for "public benefits," including state-issued licenses. Section 55.1 sets forth specific conditions under which aliens are eligible for a new or renewal ABC license under the provisions of PRWORA, and requires proof of legal presence in the United States from all applicants for a new or renewal sole owner license. [16:1 CRLR 123-24]

## ABC Tackles Problem of Underage Drinking

On January 11, Governor Gray Davis and Business, Transportation and Housing Agency Secretary Maria Contreras-Sweet announced that the state had awarded 72

grants totaling \$288,000 to local agencies to support "Every 15 Minutes," a two-day program focusing on high school juniors and seniors that targets teenage drinking and driving. The program is carried out with the assistance of ABC and the Office of Traffic Safety. [16:1 CRLR 125]

The grants represent a significant increase for "Every 15 Minutes," whose name originated from the fact that, in the early 1990s, someone in the United States died of an alcohol-related traffic collision every fifteen minutes. Teen drivers are responsible for a highly disproportionate number of collisions, injuries, and deaths. Although teens currently comprise only 10% of the population, they are involved in 25% of all alcohol-involved fatal collisions. Thirty percent of all teen deaths are caused by motor vehicle collisions. Due to the enactment of new laws and the work of grassroots organizations like Mothers Against Drunk Driving, the death rate is now one every thirty minutes—"a figure which continues to be unacceptable," according to ABC.

## ABC Takes Part in Breakup of Slot Machine Ring

In March, investigators from ABC, the sheriff's departments of Kern, Los Angeles, and San Bernardino counties, and the police departments of Ridgecrest and California City completed a six-month investigation of illegal slot machine activity at ABC-licensed businesses by confiscating 34 slot machines at nine locations in Kern, Los Angeles, and San Bernardino counties. Seven of the machines were taken from a warehouse owned by the supplier, who was arrested along with two other people. Most of the seized machines were at service clubs or fraternal organizations that operated bars; those businesses face possible fines or license suspensions.

## LEGISLATION

**AB 377 (Wesson).** Business and Professions Code section 25600(a), one of the state's "tied-house laws," prohibits ABC licensees from "directly or indirectly" giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided in regulations adopted by ABC. Section 25600(b) states that "no rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than twenty-five cents (\$0.25) per unit, or cost more than fifteen dollars (\$15) in the

aggregate for all those items given by a single supplier to a single retail premises per calendar year.”

As introduced February 11, this bill would provide that no ABC regulation may permit a licensee to give any premium, gift, or free goods to a consumer that is conditioned on the purchase of an alcoholic beverage. This bill was introduced following ABC's amendment of section 106, Title 4 of the CCR, which specifically prohibits the giving of any premium, gift, or goods through any type of sweepstakes or other promotion if the value of the premium, gift, or goods exceeds 25 cents with respect to beer, \$1 with respect to wine, or \$5 with respect to distilled spirits (see MAJOR PROJECTS) and the related litigation that resulted from the Department's position (see LITIGATION). With respect to this issue, the author of this bill states that he seeks to affirm ABC's previous policy regarding consumer promotions, in that they should not be permitted to condition the awarding of gifts on the purchase of alcohol. [A. Appr]

**SB 810 (Costa).** The “tied-house laws” separate the alcoholic beverage industry into three component parts: manufacturer, wholesaler, and retailer. Generally, other than through exemptions granted by the legislature, the holder of one type of license is not permitted to do business as another type of licensee within the three-tiered system. One exception to the “tied-house laws” permits an alcoholic beverage manufacturer to purchase beer and wine advertising space from on-sale retail licensees that own certain arenas in Orange and Sacramento counties. As amended April 5, SB 810 would expand this tied-house exception to include the on-sale licensee that owns the Centennial Garden Arena in Bakersfield, a fully enclosed arena with a fixed seating capacity in excess of 8,500. [S. GO]

**SB 607 (Chesbro).** Existing law provides an exception to the “tied-house laws” under which a licensed winemaker may hold an ownership interest or financial relationship in no more than two on-sale establishments, provided that certain conditions are met (for example, the on-sale licensee must purchase all alcoholic beverages from a California wholesaler, and the number of wine items by brand listed and offered for sale by the on-sale licensee which are produced by the winegrower does not exceed 15%). Current law additionally provides that a winegrower may hold an ownership interest in no more than two on-sale licensed premises if they are operated as a restaurant or bed and breakfast inn and if all alcoholic beverages sold at the on-sale licensed premises are purchased from a wholesaler, except for wine produced by the winegrower who has an interest in the on-sale license. The number of wine items produced by the winegrower licensee and offered for sale in a restaurant operating under this provision may not exceed 15% of the total wine items offered for sale in that establishment. As introduced February 23, this bill would modify that condition to allow a business establishment with an on-sale license in which a winemaker has a financial interest to purchase wine from California wholesalers or from licensed winemakers.

This bill is sponsored by the Family Winemakers of California. The sponsor states that the bill is intended to address an inconsistency in the law and permit a business establishment in which a winery owns an interest to purchase wine directly from the winery rather than through a California wholesaler. According to the sponsor, current law permits restaurants and hotels that have no connection to a winery to purchase wines directly from winemakers without having to buy through wholesalers. The wholesalers' trade association, Wine and Spirits Wholesalers of California, opposes the bill. [S. GO]

**AB 1525 (Lempert),** as introduced February 26, would decrease the annual fee for a beer manufacturer's license to \$100 for beer manufacturers that produce 300,000 barrels or less per year.

The “tied-house” laws generally prohibit an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic beverage manufacturer. Excepted from this prohibition is a holder of no more than six on-sale licenses who owns a microbrewery. This bill would extend that exception to holders of no more than 18 on-sale licenses. [A. GO]

**AB 749 (Wesson),** as amended April 22, would make a number of changes to the ABC Act, including the following:

- It would allow ABC to directly request and receive a court order to seize and destroy drug paraphernalia and controlled substances found on premises licensed by ABC.
- It would add, as an alternative punishment for the attempted purchase of alcohol by a minor, the performance of community service not less than 24 hours nor more than 32 hours.
- It would increase the community service penalty available from a maximum of 36 hours to not less than 36 nor more than 48 hours for a second or subsequent offense of attempted purchase of alcohol by a minor.
- AB 749 would establish a penalty for a second or subsequent offense of a minor purchasing alcohol or consuming alcohol in an on-sale premises: a fine of not more than \$500 or community service of not less than 36 nor more than 48 hours.
- It would classify as a misdemeanor the acts of selling, giving, or furnishing to any person under the age of 21 years any false or fraudulent, written, printed or photostatic evidence of the majority and identity of that person, and of selling, giving, or furnishing to any person under the age of 21 years evidence of majority and identification of any other person. These acts would be punishable by a fine of \$1,000, no part of which may be suspended.
- It would establish a fine of not more than \$500 or the performance of community service of not less than 36 nor more than 48 hours for a second or subsequent offense of a person under the age of 21 who presents or offers to any licensee, his/her agent, or employee any written, printed, or photostatic evidence of age and identity which is false, fraudulent, or not actually his/her own for the purpose of ordering, purchasing, attempting to purchase, or otherwise

procuring or attempting to procure the serving of any alcoholic beverage, or who has in his/her possession any false or fraudulent written, printed, or photostatic evidence of age and identity.

- It would establish the misdemeanor punishment of a fine of \$250 or performance of not less than 32 hours of community service for any person under the age of 21 who has any alcoholic beverage in his/her possession on any street or highway or in any public place or in any place open to the public.
- This bill would establish the misdemeanor punishment of a fine of at least \$500 or performance of community service of not less than 36 hours and not more than 48 hours for a second or subsequent offense of any person under the age of 21 who has any alcoholic beverage in his/her possession on any street or highway or in any public place or in any place open to the public.
- Finally, this bill would require a retailer licensed by ABC who sells or rents video recordings with box covers depicting "harmful matter," as defined in Penal Code section 313, to place a cover over the video box covers. Violation of this provision would be an infraction. [A. Appr]

**AB 216 (Wesson)**, as introduced January 25, would establish a permanent funding mechanism for ABC's GALE and LEAD Programs by redirecting to the ABC Fund the penalty revenues obtained from licensees that now are deposited in the general fund.

The Grant Assistance to Local Law Enforcement (GALE) program serves to establish partnerships between ABC and local agencies attempting to enforce the laws related to the sale of alcohol. The GALE program distributes grants, awarded on a competitive basis and generally in an amount of less than \$100,000, to local governments to assist their law enforcement agencies in training personnel to police and eliminate crime and nuisance problems associated with problematic licensed establishments. Since the program's inception, almost \$7 million in ABC funds has been appropriated by the legislature to support this program.

The Licensee Education on Alcohol and Drugs (LEAD) program provides training programs for ABC licensees and their employees on how to identify minors, the use and types of false identification, and existing criminal and administrative penalties for licensees and their employees who are cited for the sale of alcohol to minors. The LEAD program focuses on providing training to existing licensees in high crime areas, for servers at major public events, and for licensees who have demonstrated a need for remedial training. [A. Appr]

**SB 340 (Baca)**. Business and Professions Code section 25658.1 authorizes ABC to revoke a license for a third violation of section 25658, which prohibits the sale of alcoholic beverages to minors, within any 36-month period. As amended

April 15, this bill would provide that no violation of these provisions may be considered unless it has become final.

The ABC Act prohibits a clerk from selling alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he/she makes a sale, an application and acknowledgment on a form prepared by ABC that includes a summary of certain requirements and prohibitions in the Act. This bill would allow nonprofit organizations to obtain videotapes and other training materials from ABC on the LEAD program, and to provide these materials to ABC licensees regarding the sale of alcoholic beverages. SB 340 would also revise the ABC form entitled "Clerk's Affidavit" to contain a box that reads: "I have received the LEAD orientation from the ABC, or orientation from a training program for 'clerk: off-sale' certified by the California Coordinating Council on Responsible Beverage Service." [S. Appr]

**SB 587 (Burton)**, as amended April 5, would provide that any provision in an agreement between a beer manufacturer and a beer wholesaler for the sale and distribution of beer in California, which restricts venue to a forum outside this state and in the state of incorporation of the beer manufacturer, is void with respect to any claim arising under or relating to the agreement involving a beer wholesaler operating within California. [S. GO]

**AB 220 (Washington)**, as amended April 13, would establish the Community-Based Alcohol Education Account within the ABC Fund to finance community-based alcohol education programs for youth. ABC would make grants to cities and counties for alcohol education programs. The bill would require ABC to give preference in awarding grants to cities and counties with more than 700 retail liquor licenses within their boundaries and to other cities and counties with the highest demonstrated need, as indicated in their applications. [A. Appr]

**AJR 13 (Wiggins)**, as introduced April 12, would memorialize Congress to support the public's right to become informed regarding the health effects of wine consumption

based on the latest scientific findings as approved by the U.S. Bureau of Alcohol, Tobacco and Firearms, and to oppose a tripling of the excise tax on wine as being unwarranted, harming the

California wine industry, and unnecessarily eroding the industry's ability to compete with foreign producers in

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## LITIGATION

ABC's recent regulatory ban on most sweepstakes promotions (see MAJOR PROJECTS) has prompted litigation by and against the Department. In *California Department of Alcoholic Beverage Control v. Miller Brewing Company*, No. BC201777 (filed December 3, 1998 in Los Angeles County Superior Court), ABC sought to prevent Miller Brewing Company from engaging in its annual Super Bowl sweepstakes promotion during January 1999, alleging that the promotion

is illegal under Business and Professions Code section 25600 and section 106(j), Title 4 of the CCR, as amended on an emergency basis November 30, 1998. The promotion offered free Super Bowl tickets and other prizes to beer drinkers who enter and win a sweepstakes contest.

As noted above, section 25600 broadly prohibits licensees from "directly or indirectly" offering "any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage," except pursuant to ABC regulations, and prohibits ABC from adopting any regulation permitting beer manufacturers and retailers from offering prizes worth more than 25 cents to consumers. On November 30, 1998, ABC amplified this prohibition by adopting, on an emergency basis, new subsection 106(j), Title 4 of the CCR, which clarifies that "[n]othing in [section 106] shall be construed to authorize the giving of any premium, gift or goods of any sort, whether by way of sweepstakes, drawings, prizes, cross-merchandising promotions with a non-alcoholic beverage product or products or any other method" if the value of the premium, gift, or goods given to an individual exceeds 25 cents with respect to beer.

ABC notified Miller and other beer manufacturers of this prohibition by way of an October 1998 industrywide bulletin, released approximately two weeks before the company's Super Bowl sweepstakes promotion began, but Miller refused to withdraw the promotion voluntarily. Accordingly, the state Attorney General's Office filed suit on behalf of ABC, seeking a restraining order and civil penalties against Miller. ABC's lawsuit contended that the sweepstakes promotion and the "uncontrolled competition" it generates are "in direct contravention to California's stated public policy of strict regulation in protection of the public welfare and in promoting temperance."

On December 8, 1998, Los Angeles Superior Court Judge David Yaffe issued a restraining order against Miller, compelling the company to halt its Super Bowl sweepstakes promotion; Yaffe set a December 18 hearing date to address ABC's request for a preliminary injunction. However, Miller appealed the superior court's issuance of the restraining order and, on December 16, the Second District Court of Appeal vacated the order on grounds that ABC did not follow proper procedures in adopting the original emergency regulation. Thus, Miller was able to conduct its sweepstakes promotion during the 1999 Super Bowl.

The Office of Administrative Law (OAL) has since approved ABC's permanent adoption of the amendments to section 106(j). In a January 20 memorandum, ABC notified all interested parties of OAL's approval, and gave licensees until April 1 to end sweepstakes promotions that might be in violation of revised section 106.

However, another beer manufacturer filed a petition for writ of mandate challenging the validity of section 106(j), and—as a result—ABC's enforcement of the new rule has been stayed pending resolution of the litigation. In *Coors Brewing*

*Company v. Stroh*, No. C0311851 (filed February 17, 1999 in the Third District Court of Appeal), Coors challenges section 106(j) as being inconsistent with Business and Professions Code section 25600 and as "grossly exceeding" the authority of the Department. Coors alleges that ABC has abandoned its longstanding interpretation of section 25600, and contends that the "prize" offered in its two major sweepstakes promotions—"or, more precisely, for the vast majority of contestants, the mere chance to win a prize"—is not a "premium, gift, or free goods" which ABC is authorized to ban under section 25600. Coors argues that the rewards in its sweepstakes promotions are "prizes" (defined by Coors as any item of value offered for

winning in a game of chance), and distinguishes "prizes" from "premiums" (defined by Coors as something extra given for the purchase of a product), "gifts" (defined by Coors as something voluntarily transferred by one person

to another without compensation), and "free goods" (defined by Coors as tangible movable personal property having intrinsic value, usually excluding money). Coors also emphasizes that entry in its sweepstakes promotions is not conditioned upon the purchase of alcoholic beverages, and contends that if ABC wants to prohibit sweepstakes, it must seek that authority from the legislature.

In its response filed April 21 on behalf of ABC, the Attorney General's Office argues that Coors is lifting phrase "premium, gift, or free goods" out of context from a statute which broadly prohibits ABC licensees from "directly or indirectly" giving "any" premium, gift, or free goods "in connection with" the sale or distribution of any alcoholic beverage. ABC notes that under the California Constitution and state law, one of its primary goals in regulating the manufacture, sale, and distribution of alcohol is "to promote temperance in the use and consumption of alcoholic beverages," and that all provisions of the ABC Act "shall be liberally construed" for the accomplishment of this purpose (Business and Professions Code section 23001).

At this writing, Coors has not yet filed a reply to the AG's brief, and the court has not yet ruled on Coors' petition.

In *People v. Figueroa*, 68 Cal. App. 4th 1409 (Jan. 5, 1999), the Fourth District Court of Appeal considered whether the failure of law enforcement officers to comply with ABC's regulatory guidelines for the use of underage decoys constitutes a defense to a criminal prosecution brought under Business and Professions Code section 25658.

Section 25658, which makes it a misdemeanor to sell any alcoholic beverage to a minor, directs ABC to adopt and publish regulations to guide local law enforcement's use of persons under age 21 as police decoys. Accordingly, ABC adopted section 141, which—among other things—requires that a decoy be less than 20 years of age, display the appearance which could generally be expected of a person under 21 years of age, and answer truthfully any questions about his or her age. Further, section 141(c) provides that "[f]ailure to

## **Coors challenges section 106(j) as being inconsistent with Business and Professions Code section 25600 and as "grossly exceeding" the authority of the Department.**

comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code section 25658." [16:1 CRLR 124-27; 15:4 CRLR 137]

In this case, 7-Eleven employee Danny Figueroa allegedly sold beer to an underage decoy working with the San Diego Police Department. Both Figueroa and the decoy testified that Figueroa asked whether the decoy was over 21; the decoy testified that he answered "no." However, Figueroa testified that the decoy said "yes." Based upon that answer and the decoy's mature appearance, Figueroa sold him the beer. When later charged with a misdemeanor, Figueroa alleged that the decoy had lied about his age in violation of section 141, and that this failure to follow the guidelines entitled him to section 141's affirmative defense to the criminal charge against him.

The Fourth District disagreed, holding that the legislature directed ABC merely to adopt and publish guidelines for the use of underage decoys. According to the court, ABC is not authorized to determine "what conduct is unlawful and the penalty for the unlawful conduct." The court noted that

allowing the administrative guidelines to be used as a defense to a criminal prosecution would effectively permit ABC to define the elements of what does and does not constitute criminal conduct in the use of underage decoys, and that "[a]bsent an indication the legislature delegated such power to [ABC], this would constitute an improper usurpation of the legislature's function to define what is criminal conduct."

In concluding that the defense established by section 141(c) is limited to administrative actions taken by and within the authority of ABC, the court noted that when the legislature was directly presented with proposed legislation establishing noncompliance with the guidelines as a defense to criminal prosecution, it declined. According to the court, an early version of AB 3805 (Richter) (Chapter 1205, Statutes of 1994)—the bill that added subsection (e) to Business and Professions Code section 25658 and required ABC to adopt the minor decoy regulations—would have specifically stated that failure to observe the procedures is a defense to "any prosecution or accusation proceeding." That language was not contained in the enacted version of AB 3805.

## Athletic Commission

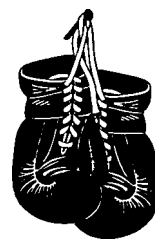
Executive Officer: Rob Lynch ♦ (916) 263-2195 ♦ Internet: [www.dca.ca.gov/r\\_athletic.htm](http://www.dca.ca.gov/r_athletic.htm)

The Athletic Commission, part of the state Department of Consumer Affairs (DCA), is empowered to regulate professional and amateur boxing and full contact martial arts and kickboxing under the Boxing Act, Business and Professions Code section 18600 *et seq.* The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members, each serving a four-year term. All eight members are "public members," as opposed to industry representatives.

The Commission has sweeping powers to approve, manage, and direct all professional and amateur boxing and full contact martial arts shows or exhibitions held in California, and to license professional and amateur boxers and martial arts competitors, promoters and clubs, referees, judges, matchmakers, booking agents, timekeepers, managers, trainers, seconds, and training facilities. The Commission is authorized to develop and administer appropriate examinations to determine the qualifications of individual athletes, including pre-bout physical examinations, HIV/HBV testing, neurological testing, and eye examinations. The Commission is also responsible for establishing and administering financial protection programs for competitors, such as the Professional Boxers' Pension Plan. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical standards. Further, the Commission's power to regulate boxing extends to

the separate approval of each contest in order to preclude mismatches. Commission representatives attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of the competitors, and the integrity of the sports of boxing and martial arts in the interest of the general public and the participating athletes.



## MAJOR PROJECTS

### Professional Boxers' Pension Plan Issues

Due to declining contributions, the stability of the Commission's Professional Boxers' Pension Plan may be in jeopardy. Created in 1982 in Business and Professions Code section 18880 *et seq.*, the pension plan is intended to provide boxers with a small amount of financial security once they have retired from boxing. The plan is funded with required contributions from boxers, managers, and promoters, which are deposited into the Commission's Boxers' Pension Fund for distribution to eligible boxers upon regular retirement at age 55, medical retirement, or vocational early retirement at age 36.

At its January 15 and March 26 meetings, the Commission discussed the Professional Boxing Safety Act of 1996, 15 U.S.C. section 6301 *et seq.*, a relatively new federal statute that preempts state regulation of professional boxing on

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